

The 2011 Kentucky Mock Trial Case

BY: JUDGE EARL-RAY NEAL

Commonwealth of Kentucky	>	
	>	
v.	>	Case No. 10-CR-241-1
	>	
SAM(ANTHA) ODDINGTON	>	

With special thanks to Dr. Rosalee Edwards; Honorable Marc Rosen, Senior Judge;
and Family and Juvenile Services Staff: Patrick Yewell, Executive Officer;
Rachel Bingham, Manager; and Billy Stover, Program Coordinator

Past Winners--Kentucky Mock Trial Tournament

1985 – Boyd County High School
1986 – Woodford County High School
1987 – Model Laboratory School
1988 – Model Laboratory School
1989 – Model Laboratory School
1990 – Woodford County High School
1991 – Model Laboratory School
1992 – Model Laboratory School
1993 – Model Laboratory School
1994 – Montgomery County High School
1995 – Model Laboratory School
1996 – Owensboro High School
1997 – Montgomery County High School
1998 – Montgomery County High School
1999 – Breckinridge County High School
2000 – Montgomery County High School
2001 – Madison Central / KY Tech
2002 – Montgomery County High School
2003 – Model Laboratory School
2004 – Montgomery County High School
2005 – Montgomery County High School
2006 – Montgomery County High School
2007 – Montgomery County High School
2008 – Highlands High School
2009 – Madison Central / KY Tech
2010 – Madison Central / KY Tech

CASE MATERIALS

Table of Contents

THE PROBLEM

Statement of Facts	4
Stipulations	5
Indictment	6

WITNESS STATEMENTS

For the Prosecution

Detective Chris Cross	8
Dr. Max Paine	10
Dr. Jamie Johnson	12

For the Defense

Sam(antha) Oddington	14
Sean Padgett	16
Dr. Pat Evanstein	18

EXHIBITS

<u>Exhibit No.</u>	<u>Exhibit Description</u>	
1.	Police Report.....	20
2.	Defendant's Handwritten Statement	22
3.	Tussionex Prescription.....	24
4.	Tussionex Patient Drug Education Monograph	25
5.	CV of Dr. Jamie Johnson	27
6.	Medical Examiner's Report	28
7.	Toxicology Report	29
8.	Timesheet for Sean Padgett	30
9.	Michigan Administrative Finding.....	31
10.	CV of Dr. Pat Evanstein.....	33
11.	CV of Dr. Max Paine	34
12.	Patient Intake Form (obtained from Dr. Paine)	35
13.	Patient Intake Form (obtained from Defendant).....	37

JURY INSTRUCTIONS 39

Questions or comments about the case may be directed to your State Mock Trial Coordinator. Teams may not edit the materials. The problem is as written. If there are discrepancies, please regard them as complexities for consideration in developing a trial strategy. It is the responsibility of the teams to review the Rules each year to ensure they are aware of any changes.

STATEMENT OF FACTS

Sam Oddington is a grandparent who has had difficulty with his/her only daughter, Jessica. Jessica has a significant drug and alcohol-related arrest record and has been unable to care for her two children: one girl, Abbey, aged two, and one girl, Anna Lauren, aged six.

The two girls had been living with the defendant for over a year. During that time, each of them has had significant health problems. Sam does have a pending custody action in family court and has been unable to get a hearing date because the mother has not been served with paperwork. The mother moves from homeless shelter to homeless shelter. As a result of not having custody of the kids, Sam cannot add them to his/her health insurance.

The older sister, Anna Lauren, became sick in the spring of 2010, and was taken to a local pediatrician. Sam was told that Anna Lauren could not be seen because she did not have insurance. Sam offered to pay cash and the practice refused that form of payment. Sam Oddington was told that the Emergency Room was the best bet for treatment.

Anna Lauren was taken to the Emergency Room on April 19, 2010, as instructed. She was given cough syrup with hydrocodone in it. The name of the medication was Tussionex, and it was used without incident as the child recovered.

The bottle of Tussionex sat in the cabinet for the summer.

In the early fall the younger grandchild, Abbey, became ill. Sam was still awaiting a court date and had asked DCBS for a medical card. The child was still uncovered by medical insurance.

Sam tried to doctor Abbey at home, and her sickness worsened by the day. The child's cough worsened to the point that no one in the house could sleep. Sam found the older child's cough medication and decided to use it. Two times during the night Tussionex was administered to Abbey at a cut dose.

The next morning Sam took Abbey to the Paine Clinic. Abbey was seen by Dr. Paine. Sam says the Tussionex was shown to Dr. Paine. Allegedly, Dr. Paine authorized the administration of the medication in a cut dose. Dr. Paine did not write a prescription.

Sam returned home where the child was administered two doses during the day and two doses during the evening. At 3:00 a.m. the next day the child stopped breathing and 911 was called. The child died.

The aforementioned Indictment is returned against Sam Oddington charging Reckless Homicide.

**This Statement of Facts is not to be used as evidence in the case;
see Stipulations Rule 5.**

**COMMONWEALTH OF KENTUCKY
ROBBINS CIRCUIT COURT
CASE NO. 10-CR-241-1**

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

STIPULATIONS

SAM ODDINGTON

DEFENDANT

* * * * *

1. Stipulations cannot be contradicted or challenged.
2. All exhibits included in the problem are authentic and accurate in all respects, and no objections to the authenticity of the exhibits shall be entertained. However, this stipulation does not preclude the necessity of teams' laying the appropriate foundation for admissibility.
3. The signatures on the witness affidavits and all other documents are authentic.
4. Chain of custody for evidence is not in dispute.
5. The Statement of Facts is of no legal consequence in terms of the trial and is **not** **admissible** for impeachment purposes or for any other purpose.
6. Exhibit 2 is in the handwriting of Sam Oddington.
7. Exhibit 3 was obtained as a result of a duly issued subpoena to Robbinsville Hospital. It is admissible without further foundation.
8. Exhibit 9 contains certified copies from the State of Michigan, Bureau of Occupational and Professional Regulation. No objection may be made to its authenticity, and it is admissible without further foundation.
9. The handwriting on Exhibit 12 is that of Sam Oddington; the document was obtained as a result of a subpoena issued to the Paine Clinic.
10. The handwriting on Exhibit 13 is that of Sam Oddington; the document was found in the Defendant's home by Detective Chris Cross in the course of his/her search on October 1, 2010.

ROBBINS CIRCUIT COURT
INDICTMENT NUMBER 10-CR-241-1
DIVISION NUMBER II

COMMONWEALTH OF KENTUCKY)	INDICTMENT
)	
)	RECKLESS HOMICIDE
)	KRS 507-050
)	
VS)	
)	
)	
)	
SAM ODDINGTON)	
)	
)	
DEFENDANT)	

THE GRAND JURY CHARGES THAT:

COUNT ONE:

On or about the 1st day of October, 2010, in Robbins County, Kentucky, the above-named defendant committed the offense of Reckless Homicide when with recklessness s/he caused the death of Abbey Oddington.

AGAINST THE PEACE AND DIGNITY OF THE COMMONWEALTH

A TRUE BILL

/S/ Addison Smith
FOREPERSON,
ROBBINS COUNTY GRAND JURY

Witnesses:
Detective Chris Cross
Dr. Max Paine

UOR Codes: 09210

Defendant ID:

Sam Oddington

SS#: 321-45-6789

DOB: June 10, 1947

Address: 123 Main St., Robbinsville, Ky.

CERTIFICATION OF RETURN

I DO HEREBY CERTIFY THE FOLLOWING TO BE TRUE AND CORRECT:

1. UPON DIRECTION OF THE COURT, I CALLED THE ROLL OF THE GRAND JURY AND THERE WERE TWELVE DULY SWORN AND ACTING GRAND JURORS PRESENT IN THE COURTROOM AT THE TIME THIS INDICTMENT WAS RETURNED BY THE GRAND JURY.
2. THIS INDICTMENT WAS PRESENTED BY THE FOREPERSON IN THE PRESENCE OF THE GRAND JURY, TO THE JUDGE IN OPEN COURT AND FILED WITH THE CLERK, ON THE 7TH DAY OF DECEMBER, 2010.

LINDA S. CATES, CLERK

BY: /S/ Arnold Sanchez DEPUTY CLERK

Affidavit of Detective Chris Cross

My name is Detective Chris Cross. I am the Detective Sergeant of the Robbinsville Police Department and the lead investigator in the homicide involving Abbey Oddington. During my career I have investigated literally hundreds of felony cases and ten homicide cases. Every one of my homicide cases has resulted in a conviction. I have to admit this is my first homicide involving a very young child and an overdose. This case has left a mark on my soul. I lie awake at night thinking about this case.

During the early morning hours of October 1, 2010, I received a phone call from the John J. Clay Hospital staff informing me that a child had died under suspicious circumstances. I learned that a two-year-old female had been brought to the hospital by ambulance and that she was DOA. I went to the hospital and entered through the emergency room door at the side. The waiting room is just off to the side, and that is where I first made contact with the Defendant, Sam Oddington.

The Defendant was the only person in the waiting room. I noticed s/he had been crying, but I did not know who s/he was at the time. I walked past him/her and continued to the receptionist area. The staff informed me that Abbey Oddington's grandparent was in the waiting room. I approached him/her and identified myself as a Detective Sergeant with the Robbinsville Police Department. S/he shook my hand and kept mumbling, "I can't believe she is gone, I wish I had never given her that medicine." I really did not know what s/he was talking about as I had just met him/her and was there to try and console him/her as best I could.

I told him/her to remain in the waiting room as I needed to talk with him/her. I went inside the emergency room and met with the attending physician that called Abbey's death. The doctor informed me that Abbey's death was suspicious and that it appeared to him to be a drug overdose. Right then and there I put it together and concluded that Sam Oddington had earlier confessed to me in the hospital waiting room. I rushed outside only to find the waiting room empty. I went outside to look for Oddington and was unable to locate him/her. One of the first things you learn in the police academy is that guilty people run. I could not imagine leaving my grandchild dead in an emergency room knowing that a detective needed to talk to me. Oddington left because s/he was trying to avoid me.

My next order of business was to go to the Oddington home and inspect the crime scene. I was relieved to find Oddington at home. S/he met me at the door and was crying. It was obvious s/he felt bad about what had happened. I asked to come in and was permitted to make entry into the crime scene. I found the home to be well kept with nothing much out of place. I did not know how long Oddington had been home alone or what had been moved or removed from the crime scene. I read Oddington the Miranda Warnings and proceeded to ask questions. Much to my surprise, the defendant was quite forthcoming and gave a completely voluntary statement to me in his/her own handwriting. I have attached the original statement as a supplement to my police report. After Oddington confessed to giving Abbey Tussionex cough medication that was prescribed to her older sister, I placed the defendant under arrest for the Reckless Homicide of Abbey Oddington.

46 I made search of the home and found a bottle of Tussionex cough medication prescribed
47 to Anna Lauren Oddington. Further investigation revealed this to be Abbey's older sister. I
48 also found the detailed drug description that included warnings not to administer the medication
49 to someone other than the person to whom the medication was prescribed. There is no
50 conceivable scenario under which Abbey should have been given that medication.

51
52 An unfortunate part of my job is the requirement to attend the autopsy of any homicide
53 victim within my jurisdiction. This was the most difficult and emotional autopsy I have ever
54 attended in my career. The Medical Examiner's report confirms that which my investigation
55 revealed. Sam Oddington failed to care for Abbey, and as a result of his/her reckless conduct, a
56 young life was tragically ended.

57
58 Oddington seems to be trying to put the blame on Dr. Paine. While I don't know
59 him/her personally, my father-in-law plays golf with him/her weekly. My father-in-law says
60 s/he always plays the ball down and would never fudge his/her score in the least. My dad taught
61 me to play the greatest game on earth, golf. He always said you could tell the caliber of a
62 person by playing a round of golf with that person. What I know of Dr. Paine is that s/he has a
63 good reputation for being a thorough and caring pediatrician. If I had kids, I would certainly
64 take them to him/her for medical care.

65
66 Oddington's lawyers are trying the old "smoke and mirror" tactic in this case. I made an
67 appointment to speak to Dr. Paine about Abbey's death and the allegation s/he changed Abbey's
68 medical records, but the good doctor was unable to make the appointment. I was busy with
69 other cases and was certain I had this case solved, so I didn't push the issue of rescheduling.
70 Besides, if s/he wouldn't cheat at golf, s/he would not ever dream of changing a medical record.
71 They have manufactured this medical intake sheet as a distraction. Defense lawyers do that kind
72 of thing in high profile cases just to grab headlines. There is no way a doctor of Dr. Paine's
73 stature would falsify or modify a medical record. I am confident that this case will end in a
74 conviction of the defendant. My track record in homicide cases is perfect, and I expect it to stay
75 that way when the jury comes in.

76
77 Further, your affiant sayeth naught.

78 Signed,

79 /S/

80 **Chris Cross**

Affidavit of Dr. Max Paine

My name is Dr. Max Paine. I have a clinic here in Robbinsville, Kentucky, and have practiced here for about three years. I love this town and the slower pace of a small community. Before I came to Kentucky, I practiced in Lansing, Michigan. I was part of a group of four physicians that concentrated on the wellness of children. That fast-paced lifestyle and big city living was not for me.

Much has been made about my administrative problems in Michigan with my license to practice medicine. Despite all the doctor jokes and the left-handed comment about God complexes, people have to understand that doctors are human and we make mistakes. I will admit I was so stressed with the billable hour requirements of the practice and the mounting debt of the clinic that I made a mistake and misdiagnosed a child five years ago. I was in a different situation then, and I take full responsibility for missing the diagnosis in that case.

As much as I accept responsibility for my Michigan issue, I equally deny responsibility in this case. Simply put, the defendant is lying when s/he says s/he showed me the Tussionex prescription. Oddington is trying to place blame for this innocent child's death on me instead of accepting responsibility him/herself.

Not only did I not see the Tussionex bottle, I certainly did not have any conversation with Oddington about the administration of that drug to a child less than six years of age. Even a first-year medical student knows you should not administer a narcotic-based cough medication to a child of that tender age. I did not and would not have permitted the administration of the Tussionex to Abbey.

Another thing I need to clear up is that Sean Padgett was fired on October 1 for never showing up to work on time. I run a successful practice and focus on patient service. Bottom line is: if you do not show up to work on time, you cannot work for me. Sean is just like the rest of this younger generation, no work ethic. When s/he alleges I asked him/her to destroy or alter a medical record, that is simply a gross misstatement of the facts.

The day Sean was fired is very clear in my memory. I, as usual, came into the office at 6:00 a.m. The office opens at 8:00 a.m. I like getting there early because it gives me alone time and time to get ready for the day. Taking care of children is serious business, and I need to be as clearheaded as I can be before the day starts. A bit before 8:00 a.m. my office manager and file clerk showed up. They were in the staff break room drinking a cup of coffee as I walked down the hall and bid them good morning. I overheard my file manager say, "S/he has done it again. S/he lost that Oddington file yesterday afternoon." I stopped and inquired if this was a situation that required my attention. Both the file clerk and the office manager informed me of Sean's increasingly sloppy work and his/her continuous failure to be on time for work. Frankly, I never noticed Sean being late.

I made my mind up I would discuss the matter with Sean when s/he arrived at work. About 8:15 a.m., Sean came into the office. Now that I knew Sean was habitually late, my aggravation grew by the minute. We had patients to see and files to bill. I admit, I lost my

temper when s/he showed up fifteen minutes late for work. I also admit that I screamed at Sean and said, "Find that Oddington file NOW!" It had nothing to do with me trying to cover something up; I do not have anything to hide. I needed the file because the file manager told me she had to confirm medical insurance. I overheard something about Oddington being a self-pay client. I do not like self-pay accounts because it is just easier and more lucrative to bill insurance.

I do recall seeing Abbey Oddington in my clinic. She presented oriented times three and had a slight temperature. The child's grandparent was present, and I noted that in my dictation. I had a visit with the child that lasted about fifteen minutes. During that time she presented with a cold.

The common cold is a viral infection of the upper respiratory tract. More than 200 different viruses can cause a cold, but the rhinovirus is the most common culprit. Because colds are viral infections, antibiotics, which treat bacterial infections, are not useful for treatment. Except in newborns, colds in healthy children are not dangerous. Colds usually go away in four to ten days without any special treatment. Because of the great number of viruses that can cause colds and because new cold viruses develop, children never build up resistance against all cold viruses.

Sometimes fatigue, stress, or the type of cold virus may promote a bacterial infection somewhere in a child's body, such as the lungs, throat, ears, or sinuses. The bacterial infection weakens the body's immune system and requires treatment with an antibiotic. Symptoms include watery nasal mucus, sneezing, fatigue, and sometimes fever. Because of the postnasal drip, Abbey had a sore throat and cough. The cold virus had affected her sinuses, throat, bronchial tubes, and ears. She also had diarrhea and vomiting.

Oddington told me that Abbey was having mucus secretions. As the cold progresses, the mucus secretions from the sinuses normally turn darker and thicker. Abbey had developed a mild cough, which I knew could last for several days. The defendant seemed quite concerned about the cough. I suspected it was more of a concern for his/her own sleep than it was for Abbey. Because of her symptoms I concluded, correctly so, that Abbey had a cold. I told Oddington to make certain she took plenty of liquids and to make certain she rested. I instructed him/her to return with Abbey if her temperature exceeded 103 degrees.

I was contacted in the early morning hours with the sad news of Abbey's death. I cannot believe any right-thinking person would administer a narcotic medication to a child of her age. If the defendant had been more worried about Abbey and less concerned with the cough keeping him/her up at night, I suspect Abbey would still be with us today. I gave good medical advice. The medical examiner concluded that this death was a homicide, and I agree with that conclusion.

Further, your affiant sayeth naught.

Signed,

/S/

Max Paine, M.D.

Affidavit of Dr. Jamie Johnson

My name is Dr. Jamie Johnson. I am forty-three years old and currently serve as the Chief Medical Examiner for the Commonwealth of Kentucky. I have held this position for nearly two years. I am proud to be associated with Kentucky's Medical Examiner's Office. Many of our medical examiners have been recognized as national leaders in their respective fields. The scientific staff members of the Kentucky Office of the Medical Examiner assist Kentucky coroners and law enforcement agencies in all aspects of death investigation. Central to the role of the office is the performance of the forensic autopsy, to aid in the determination of cause and manner of death of individuals, and identification of the deceased.

Forensic specialists working for the Medical Examiner's Office include forensic pathologists, forensic odontologists, and specialists in neuropathology, forensic toxicology, and forensic anthropology. My office annually conducts around 2,500 forensic autopsy examinations at the four regional offices, located in Louisville, Frankfort, Ft. Thomas, and Robbinsville. A forensic pathologist is available to coroners for consultation 24 hours a day, every day of the year.

As the Chief Medical Examiner, it is my primary responsibility to provide accurate, thorough, and efficient medicolegal investigations of death, thereby ensuring justice, and providing solace, comfort, and protection to the living. I take my job very seriously and am very good at it.

I know Dr. Pat Evanstein. As a matter of fact, I worked in the Medical Examiner's office for many years under his/her administration. Since I have taken over the Chief Medical Examiner's post, I have been able to bring my office into this century. I have spent hundreds of thousands of dollars updating the technology and staff. I have a great deal of respect for doctors like Evanstein, but let me say no tears were shed the day that administration ended. Dr Evanstein is now a hired gun and will testify if you have money. Personally, I will never hire myself out to the highest bidder. The Office of the Medical Examiner means too much to me to denigrate.

I personally performed the autopsy on the 3-year-old female known as Abbey Oddington. It was clear to me that her death was a homicide. My autopsy concluded that she died as a result of an overdose of Tussionex. This combination product is used to treat coughs and other symptoms caused by the common cold or allergies. This product contains 2 medications: hydrocodone and chlorpheniramine. Hydrocodone is a narcotic cough suppressant (antitussive) that acts on a certain part of the brain (cough center) to reduce the urge to cough. Chlorpheniramine is an antihistamine that helps to relieve watery eyes, itchy eyes/nose/throat, runny nose, and sneezing.

This is a case of serious overdosage with hydrocodone as characterized by Abbey's respiratory depression (i.e. a decrease in respiratory rate and/or tidal volume). The autopsy showed skeletal muscle flaccidity, with bradycardia and hypotension present in the decedent. In Abbey's case she was a victim of severe overdosage apnea, circulatory collapse. Ultimately she died of cardiac arrest and an unsustainable decrease in her respiratory rate. The defendant's

47 continual use of Tussionex attacked Abbey's central nervous system and caused a fatal
48 depression in its workings. Simply put, the defendant's reckless actions caused Abbey's death.
49

50 Cough-and-cold products such as Tussionex have not been shown to be safe or effective
51 in children younger than 6 years. Therefore, no circumstance could exist whereby this
52 medication should have been given to this child. Like so many other tragic deaths, this one
53 could have easily been prevented with the exercise of a little common sense. If Sam Oddington
54 had not used this medicine as a chemical babysitter, that little child would be alive today.
55

56 Further, your affiant sayeth naught.

57 Signed,

58 /S/

59 **Jamie Johnson, M.D.**

Affidavit of Sam(antha) Oddington
Defendant

My name is Sam Oddington. I am sixty-three years old. I was married to a wonderful husband/wife for nearly forty years until s/he was taken from me by a horrible car accident two years ago. I live here in Robbinsville, Kentucky, in the house we bought when we were first married

We have one child, a daughter, named Jessica. I guess you could say Jessica is a handful. She has had difficulty with drugs and alcohol since she was about fourteen years old. We tried everything with her: intervention, rehab, tough love, you name it. She started running with the wrong crowd and eventually ran away from home when she was seventeen. Jessica never married but has given me two wonderful grandchildren. I have a six-year-old granddaughter named Anna Lauren and had a two-year-old granddaughter named Abbey, until that quack, Dr. Paine, misdiagnosed her, and she passed away in my arms.

Jessica has never been able to care for Anna Lauren and Abbey. She has always put her drinking and drugging ahead of being a good mother. After much prodding, Jessica left the girls with me right after I lost my husband/wife. I have done the best I could with them. Having to deal with the loss of my life-long love and having two kids to raise at my age has been hard, to say the least.

In mid-April of 2010, my oldest granddaughter, Anna Lauren, came down with what I thought was a cold. Her congestion worsened and her cough kept her up at night. I took her to the local pediatrician's office and was refused admittance. Since I was not her parent or legal guardian, I was not able to put her on my medical insurance. Much to my surprise, I was told that the doctor did not accept cash as a form of payment. I understand doctors no longer making house calls--but not taking cash?

I was desperate. I took her to the emergency room and demanded that she be seen by a doctor. She was prescribed Tussionex. I took her home and followed the doctor's orders. I gave her a half teaspoon of the syrup every 12 hours. In a few days Anna Lauren was back to her old self.

Soon thereafter, I decided to file a lawsuit asking the Family Court to award me custody of the girls. I felt like it was the right thing to do and believed it would make caring for them much easier if I could make decisions and get medical care for them. I filed the lawsuit in June of 2010 but have not had a court date yet. Jessica moves around so much that the sheriff cannot get her served, and no one has seen the girls' father since Abbey was born. As I sit here today, I still do not have legal custody.

On September 29, 2010, Abbey started to cough. It started early in the morning and worsened as the day progressed. I looked at the bottle of Tussionex that had been prescribed to Anna Lauren and decided I would cut the dose and give it to Abbey. Despite the age difference, Anna Lauren and Abbey were close in weight. Anna Lauren has always been small for her age. When Abbey became ill, Anna Lauren weighed about thirty-four pounds and Abbey weighed

27 twenty-eight pounds. I gave Abbey two doses during the twelve-hour period, and she slept well.
28 The next morning, she was coughing up green mucus, she had a fever, her breathing was fast,
29 she was shaking like she was chilling, and her little heart was beating very fast. When she
30 started to vomit, I knew I had to do something.

31
32 A friend of mine told me that Dr. Max Paine had opened an office here in Robbinsville. I
33 heard that s/he was a good pediatrician and really cared about kids. I didn't learn until after
34 Abbey died that s/he opened an office here because s/he had been found out for the quack s/he
35 is, and his/her medical license had been taken from him/her in Michigan. If I knew then what I
36 know now, I would have never taken my precious Abbey to that charlatan and she would still be
37 alive today.

38
39 Nevertheless, I took Abbey to Dr. Paine's office. I took the cough medication with me
40 and listed it on the intake records they made me fill out during the new patient registration
41 process. When Abbey's name was called, we went in and met with Dr. Paine. Dr. Paine
42 seemed nice enough, but something didn't seem right. Since I had heard s/he was a good
43 doctor, I decided to listen to give it a try. After all, I could pay cash and didn't have to fight
44 with the staff to have Abbey seen despite my not having custody.

45
46 Dr. Paine spent about fifteen minutes with us. The doctor looked at the cough syrup I
47 had given her and said that it was fine and that I could continue to give it to Abbey in the
48 reduced dose. Doctor Paine said Abbey had a run-of-the-mill cold and that it would pass in a
49 few days. I paid the twenty-five dollar office visit fee in cash and went home.

50
51 I continued to give the cough syrup as instructed by Dr. Paine. I gave Abbey two doses
52 during the day and two doses during the evening. The last dose I gave Abbey was just after
53 midnight on the morning of October 1, 2010. I put her back in her bed and tried to get some
54 sleep myself. About fifteen minutes after I laid her down, I heard her making gurgling sounds
55 through the baby monitor. I ran into her room and found her with a strange bluish color about
56 her and unable to breathe. I sat her up and patted her back, but she was not responding. I called
57 911.

58
59 Honestly, I don't remember much after that. I went in the ambulance with her to the
60 hospital. The doctor came out and told me that Abbey had died. I lost it. I was crying and
61 hysterical. I do remember the detective showing up and asking me questions. What kind of
62 police officer does that? I had just lost my precious granddaughter and he is asking me
63 questions. I do not recall anything I said to him other than, "My baby is dead, why, why, why?"

64
65 I cannot believe I am being accused of hurting Abbey. If Dr. Paine would have done
66 his/her job, Abbey would still be here. S/he needs to lose his/her license and be prosecuted for
67 what s/he did to Abbey.

68
69 Further, your affiant sayeth naught.

70 Signed,

71 /S/

72 **Sam(antha) Oddington**

Affidavit of Sean Padgett

My name is Sean Padgett. I am twenty-six years old and live in Robbinsville, Kentucky. I am proud to say I graduated from Eastern Kentucky University last year and am planning on attending medical school at the University of Kentucky in the fall. After I graduated from college, I thought it would be a good idea to earn a bit of money and get some real-life experience in a doctor's office.

I applied for and was hired as a receptionist/records clerk in Dr. Max Paine's office. It was a difficult transition from college to the real working world. I never felt like I fit in at Dr. Paine's office. I was much younger than the other staff members, and they resented my youth and superior education. From day one I worked hard to follow the office rules. I admit I was late to work a few times. I never liked early classes, and I certainly did not like having to be at work at 8:00 a.m.

The day Mr./Ms. Oddington came into Dr. Paine's office is very clear to me. I remember his/her granddaughter being very ill and Mr./Ms. Oddington showing me the bottle of medicine s/he had been giving her to quell a cough. I noticed that the name on the bottle of Tussionex was not the name of the little girl s/he brought in. The thought crossed my mind that s/he should not be giving medicine to that little girl unless it was prescribed specifically for her. Everyone knows you are not supposed to take medication prescribed to someone else.

Nothing about Mr./Ms. Oddington's visit was out of the ordinary. S/he paid cash for the office visit and left. Part of my job was to make sure new patients filled out the office paperwork appropriately. I do remember Mr./Ms. Oddington asking for a copy of all the paperwork s/he filled out. S/he made some comment like s/he was going through a custody battle over the grandkids and s/he needed it for proof that s/he was caring for the kids. I did not think much of it at the time and happily made a copy.

I forwarded Mr./Ms. Oddington's granddaughter's file to the file clerk and went on with my day. When I arrived at work the next morning, as usual, I was just a few minutes late. I found my workspace completely and utterly ransacked. It looked as though it were a crime scene. Dr. Paine and two other staff members were already in the office when I clocked in. I saw Dr. Paine coming at me in what appeared to be a fit of rage. It was obvious s/he had not slept much the night before and that s/he was very upset. S/he yelled at me to "find that Oddington file NOW!" Needless to say, I was in shock at how the Doctor acted toward me. S/he kept mumbling, "I gotta make this right." I didn't know what that meant but soon found out that Mr./Ms. Oddington's granddaughter died after she left Dr. Paine's office.

I quickly went to the file cabinet and found the file. Dr. Paine was not able to locate it because s/he was looking under the granddaughter's name. S/he did not realize that Sam Oddington was self-pay and that the file was in his/her name. The doctor ripped the file from my hand and tore through it. When s/he came to the intake sheet, s/he lost all color. I thought s/he was going to pass out. S/he started yelling at me, "Why didn't you tell me she was taking Tussionex? I've killed that little girl!"

46 Dr. Paine had the intake sheet in his/her hand and said, "You have got to destroy this." I
47 didn't understand that s/he was trying to cover his/her tracks then, but I sure know what s/he
48 was up to now. I told Dr. Paine there was no way I was going to falsify or destroy a medical
49 record. I went on to tell him/her that it would do no good to destroy it as I had already made a
50 copy of it for Mr./Mrs. Oddington. That really sent him/her over the edge. S/he screamed,
51 "YOU'RE FIRED." I was actually scared of him/her at that point. I gathered my belongings
52 and left. It was not until later that I learned that Dr. Paine actually removed the Tussionex
53 disclosure from the intake sheet.

54
55 I saw Abbey's obituary in the paper. I sat up all night after I read it feeling that I had
56 information that needed to be shared. The next day I went down to the Robbinsville Police
57 Department and asked to speak to the detective investigating Abbey's death.

58
59 Detective Cross was just that, cross. S/he acted like s/he did not believe anything I said.
60 S/he even stated, "No doctor would ever change the medical record of an infant." I'm no
61 lawyer, but I have watched enough Law & Order to know that the police are supposed to
62 investigate crimes and that s/he didn't seem very interested in following the lead. S/he kept
63 saying that a suspect had been taken into custody and that the case was already solved.

64
65 Some people may think I am testifying because Dr. Paine fired me. Nothing could be
66 further from the truth. Despite the fact that I have a pending unemployment claim against the
67 Paine Clinic, I am here because what Dr. Paine did to that child is a shame. I really believe
68 Abbey would be alive today if Dr. Paine had just taken the time to look at the intake sheet and
69 see the information about the medication the child was being given. I now know that Dr. Paine
70 changed the medical records by deleting the information about the cough medication. S/he did
71 it to cover his/her tracks. If Mr./Mrs. Oddington gets convicted of this and the Doctor walks, it
72 will truly be a miscarriage of justice.

73
74 Further, your affiant sayeth naught.

75 Signed,

76 /S/

77 **Sean Padgett**

Affidavit of Dr. Pat Evanstein

My name is Dr. Pat Evanstein. I am the retired Medical Examiner for the Commonwealth of Kentucky. I am now the President of Evanstein Forensic Associates, Inc. I was privileged to serve the citizens of our great state for twenty-five years as the Medical Examiner. I retired from the Medical Examiner's Office two years ago. My position is now held by Dr. Jamie Johnson.

During my tenure as the Medical Examiner, I instituted an internship program. It was designed to foster interest in working in the forensic science profession. Of course, nothing has been better for sparking interest in my profession than the CSI programs on TV. Of course, they are cheesy and do not accurately describe what the Medical Examiner's Office does. Trust me, life as a Medical Examiner is not as glamorous as what TV makes it out to be.

Dr. Jamie Johnson was one of my interns. As a matter of fact, the good doctor was my personal intern while in high school. I hired him/her out of medical school and am proud to see him/her in my position. Dr. Johnson normally does a fine job as Medical Examiner; however, his/her conclusions are wrong in this case.

I have reviewed the medical reports, autopsy notes, photographs, and medical examiner's final report associated with Abbey Oddington. Simply put, her death is not and should not be ruled the result of a homicide. Abbey's death is the result of Dr. Max Paine's malpractice. Abbey died from untreated pneumonia. Not only is Max Paine's failure to properly diagnose Abbey's condition medical malpractice, it is criminal. Dr. Paine should be on trial here today instead of Sam Oddington.

Dr. Paine failed to recognize the clear signs of pneumonia. Abbey presented in his office coughing up green mucus, a fever, an elevated breathing rate, shaking, and exaggerated heart function. Abbey had also experienced episodes of stomach purge (vomiting). Even a first-year medical student would recognize the symptoms of pneumonia.

Pneumonia is a lung infection that can make you very sick. You may cough, run a fever, and have a hard time breathing. For most people, pneumonia can be treated at home. It often clears up in 2 to 3 weeks. But older adults, babies, and people with other diseases can become very ill. They may need to be in the hospital.

Pneumonia usually starts when you breathe the germs into your lungs. You may be more likely to get the disease after having a cold or the flu. These illnesses make it hard for your lungs to fight infection, so it is easier to get pneumonia. Symptoms of pneumonia caused by bacteria usually come on quickly. They may include:

- Cough. You will likely cough up mucus (sputum) from your lungs. Mucus may be rusty or green or tinged with blood.
- Fever.
- Fast breathing and feeling short of breath.

Robbinsville Police Department—Incident Report

CASE NUMBER: 10-1578		DATE OF REPORT – TIME: 12/06/10 14:53		<input checked="" type="checkbox"/> ORIGINAL REPORT <input type="checkbox"/> SUPPLEMENTAL REPORT	
DATE OF OCCURRENCE: 10/01/10		TIME OF OCCURRENCE: 3:00 a.m.		DOD: [] 1 Sun [] 2 Mon [] 3 Tues [] 4 Wed [] 5 Thur <input checked="" type="checkbox"/> 6 Fri [] 7 Sat [] 98 Unk	
INCIDENT LOCATION: 1234 Wellness Rd., Robbinsville, KY					
COMMON/BUSINESS NAME: Robbinsville Hospital		BEAT: C.I.D.		MAPR:	
DISTRICT:		ALCOHOL: [] YES <input checked="" type="checkbox"/> NO [] UNK		DRUG: <input checked="" type="checkbox"/> YES [] NO [] UNK Tussionex	
LOCATION TYPE: Hospital		DEPT. CLASSIFICATION:			
CASE STATUS: [X] 1 cleared by arrest [] 2 exceptionally cleared [] 3 unfounded [] 4 inactive [] 5 pending arrest [] 6 pending inv. results [] 7 info. Only [] 8 admin. cleared					DATE: 10-01-10
UCR STATE CLASSIFICATION: (STATUTE NUMBER AND TEXT) 507.050 Reckless Homicide				UOR CLASSIFICATION: 009210	
ATTEMPTED/COMMITTED: [X] 1 Committed [] 2 Accessory After [] 3 Accessory Before [] 4 Aid/Abet [] 5 Assault To [] 6 Attempt to [] 7 Conspiracy To [] 8 Facilitation Of [] 9 Solicitation To [] 10 Threat To [] 11 Unfounded					
ATTACK REASON: [] 1 Assault [] 2 Theft [] 3 Menace [] 4 Concerned Citizen [] 5 Mental		WEAPON TYPE: [] 1 Firearm [] 2 Knife/Cutting Instrument [] 3 Hands/Fists/Feet, etc. [] 4 Other Weapon			
ENTERED:	STRUCTURE OCCUPANCY:	EVIDENCE OBTAINED: [X] YES [] NO [] UNK		LOCATION TYPE:	
JUVENILE DISPOSITION: [] 1 Handled w/in Dept. [] 2 Referred to Juvenile Court [] 3 Referred to Welfare Agency [] 4 Referred to Other Police [] 5 Referred to Adult Court					
UCR DISPOSITION: [] 1 Cleared by Arrest - Adult [] 2 Cleared by Arrest - JUV [] 3 Exceptionally Cleared – Adult [] 4 Exception Cleared – JUV [] 5 Unfounded [] 6 Active					
EX CLEARED TYPE: [] 1 Extradition Declined [] 2 Arrest on Primary Ofns [] 3 Death of Offender [] 4 Vict/Witn Refused Cooperate [] 5 Prosecution Declined [] 6 Juvenile/No Custody					
THEFT BY COMPUTER? [] YES [] NO [] UNK		FORCED ENTRY? [] YES <input checked="" type="checkbox"/> NO [] UNK		DATE CLEARED: 10/1/10	
DRUG ACTIVITY: [] 6 Manufacture [] 7 Produce [] 8 Cultivate [] 9 Possess [] 10 Smuggle [] 11 Sell [] 12 Traffic [] 13 Other		[] 1 N/A [] 2 Buy [] 3 Deliver [] 4 Use [] 5 Distribute [] 6 Manufacture [] 7 Produce [] 8 Cultivate [] 9 Possess [] 10 Smuggle [] 11 Sell [] 12 Traffic [] 13 Other			
DRUG TYPE: [] 1 N/A [] 2 Amphetamine [] 3 Barbiturate [] 4 Cocaine [] 5 Heroin [] 6 Hallucinogen [] 7 Marijuana [] 8 Opium/Derivative [] 9 Synthetic [] 10 Paraphernalia					
QUANTITY:		UNITS: [] 1 Gram [] 2 Milligram [] 3 Kilogram [] 4 Ounce [] 5 Pound [] 6 Ton [] 7 Liter [] 8 Milliliter [] 9 Dose		VALUE	
VICTIM/OFFENDER RELATIONSHIP: Grandchild/Grandparent		ASSAULT/HOMICIDE CIRCUMSTANCES: Reckless Homicide			
CHILDREN WERE... [X] 1 Involved [] 2 Present [] 3 N/A [] 4 Both		OFFICER ACTION: [] 1 Arrest Family Violence [] 2 Arrest Other Offense [] 3 Summons [] 4 Separation [] 5 Unfounded [] 6 Referred to Social			
PRIOR COURT ORDERS: [] YES [] NO [] UNK		ALCOHOL USED BY: [] Aggressor [] Victim [] Both Used [] Neither Used		DRUGS USED BY: [] Aggressor [] Victim [] Both Used [] Neither Used	
PREVIOUS COMPLAINTS: [X] 1 None [] 2 one-Five [] 3 Six-Ten [] 4 More than 10 [] 5 Unknown		SERVICES: [] Advised [] Not Advised		AGGRESSOR IDENTIFIED BY: [] 1 Physical Evidence [] 2 Testimonial [] 3 Both	

Exhibit 1

CASE NUMBER: 10-1578	DATE OF REPORT – TIME: 12/06/10 14:53	<input checked="" type="checkbox"/> ORIGINAL REPORT <input type="checkbox"/> SUPPLEMENTAL REPORT
BRIEF DESCRIPTION:		
<p>During the early morning hours of October 1, 2010, I received a phone call from the 911 dispatch regarding a suspicious death of a child at John J. Clay Hospital. A two-year-old female named Abbey Oddington had been brought to the hospital by ambulance. I went to the hospital and found Abbey Oddington DOA. I made contact with Sam Oddington, the grandparent and caregiver of the decedent.</p> <p>During my initial contact, Sam Oddington admitted responsibility for Abbey Oddington's death. Oddington stated, "I can't believe she is gone; I wish I had never given her that medicine." At that time, I told him/her to remain in the waiting room as I needed to speak with him/her as part of my investigation.</p> <p>I went inside the emergency room and met with the attending physician that called Abbey's death. The doctor informed me that Abbey's death was suspicious and that it appeared to him to be a drug overdose or complications from pneumonia. I concluded that Sam Oddington's earlier statement was in fact a confession. I rushed outside and, despite my clear instructions to Oddington to remain in the waiting room, I found it empty.</p> <p>A search of the hospital grounds ensued. I radioed to dispatch that I had a homicide investigation open and that the perpetrator of the crime had fled. I, along with several uniformed officers, rushed to the Oddington home to inspect the crime scene. Oddington was at home, met me at the door, and was crying. I was permitted to make entry into the crime scene. I secured the crime scene, read Oddington the Miranda Warnings, and proceeded to ask questions. Oddington gave a completely voluntary statement to me in his/her own handwriting. I have attached the original statement as a supplement to my police report. Oddington confessed to giving Abbey Tussionex cough medication that was prescribed to her older sister.</p> <p>I then made a search of the home. A bottle of Tussionex cough medication prescribed to Anna Lauren Oddington was found in the master bathroom medicine cabinet. Additional evidence found at the scene included a detailed drug description for Tussionex that included warnings not to administer the medication to someone other than the person to whom the medication was prescribed. I also obtained what appears to be a medical intake sheet from Dr. Max Paine's office. I placed Oddington under arrest for the homicide of Abbey Oddington and transported the Defendant to the Robbinsville PD.</p> <p>I made an appointment to speak to Dr. Paine about Abbey's death. Dr. Paine was unable to make the appointment. I closed this case as solved based on the confession of the Defendant and the compelling physical evidence found at the crime scene.</p>		
ATTACHMENTS:		GCIC ENTRY
<input type="checkbox"/> Persons <input type="checkbox"/> Property <input type="checkbox"/> Offenses <input checked="" type="checkbox"/> Narrative Statement of the Defendant		<input type="checkbox"/> Warrant <input type="checkbox"/> Vehicle <input type="checkbox"/> Article <input type="checkbox"/> Boat <input type="checkbox"/> Gun
REPORTING OFFICER: Detective Chris Cross /S/	BADGE: 408	DATE: 12/06/10
SUPERVISOR: Sgt. W. Reardon /S/	BADGE: 3789	DATE: 12/06/10
KCIC OPERATOR:	BADGE:	DATE:

You asked me to write down my recollection of my precious Abbey's death. I am honestly in no shape to write about or talk about this, but I will do my best. My granddaughters, Anna Lauren and Abbey, have been living with me for quite a while. My daughter has been unable to raise her children, and I have been doing the best I can with them.

I do not have legal custody of my grandkids. I have been trying, but cannot seem to get the case moving in Family Court because my daughter has not been served with the papers. Since I do not have custody, I cannot add them to my health insurance.

In Spring of this year, Anna Lauren became ill. I obtained a prescription for Tussionex for her from the Emergency Room doctor. The medicine worked fine for Anna Lauren. I put what I didn't use up in the medicine cabinet in the bathroom and honestly did not think about it again until Abbey started coughing.

I have doctored my daughter through many colds and sniffles. When Abbey got sick, I could tell her cough did not sound right. I didn't have insurance coverage for her so I tried to doctor Abbey at home. After a couple of days of being up all night with her coughing, I remembered the left over cough syrup in the medicine cabinet. Despite being older, Anna Lauren is really not that much bigger than Abbey. The cough syrup worked for Anna Lauren and I decided to give some of it to Abbey. We had to get some sleep. I gave the cough syrup to her two times during the night and used a cut dose. I did not give her much of that cough syrup. The medicine worked and she slept well.

The next morning I took Abbey to the Paine Clinic. Abbey was seen by Dr. Paine. I made it a point to take the cough syrup with me into Dr. Paine's office, and I let him/her look at it. I even listed it on the intake form that I had given Abbey the Tussionex. No matter what Dr. Paine may tell you, s/he told me that it was fine to give Abbey that medicine. S/he said all I had to do is give Abbey the cough syrup like Anna Lauren's prescription said and to use a smaller dose. Dr. Paine told me s/he normally would not encourage people

to share prescriptions, but since I didn't have custody or insurance, this was the cheapest and easiest way for me to nurse Abbey back to health.

I took Abbey home and gave Abbey the medicine like Dr. Paine said. I followed the schedule that I used with Anna Lauren and continued to cut the dose. Abbey seemed fine when I put her down. Later in the night I heard her making weird noises. It was like she was gasping for air. I ran to her and saw she was not breathing right. She was a bluish color. I called 911 and went to the hospital. I don't really remember anything else except the emergency room doctor coming out and telling me she was gone.

Sam Oddington

THE OVERALL COLORED FACE OF THE ORIGINAL DOCUMENT CHANGES SHADE GRADUALLY AND SMOOTHLY

ROBBINSVILLE HOSPITAL **Rx**

1234 Wellness Road
Robbinsville, Kentucky
(999) 123-4567
DEA # JD 9876

Name ANNA LAUREN ODDINGTON
Address 123 Main St., Robbinsville, Ky. Date 4-19-10

$\frac{1}{2}$ tsp PO q 12h prn
cough
90 ml

☐ 1-24
☐ 25-49
☐ 50-74
☒ 75-100 ml
☐ 101-150
☐ 151 and Over

Refill NR 1 2 3 4 5

John Doe M.D. John Doe M.D.
Signature Physicians' Printed Name Required

Prescription is void if more than one (1) prescription is written per blank.

THE ORIGINAL DOCUMENT HAS A REFLECTIVE WATERMARK ON THE BACK
THIS PRESCRIPTION IS FOR MOCK TRIAL PURPOSES ONLY AND IS VOID


Robbinsville Pharmacy

 220 Maple St.
 Robbinsville, Kentucky

Rx: 55555

Patient Drug Education Monograph
Prepared for: ANNA LAUREN ODDINGTON

DATE: April 19, 2010

DRUG: TUSSIONEX PENNKINETIC SUSP

IDENTIFICATION: GOLD Suspension, Sust. Release 12 hr

GENERIC NAME: HYDROCODONE/CHLORPHENIRAMINE POLISTIREX ER SUSPENSION–ORAL

COMMON BRAND NAME(S): Tussionex

USES: This combination product is used to treat coughs and other symptoms caused by the common cold or allergies. This product contains 2 medications: hydrocodone and chlorpheniramine. Hydrocodone is a narcotic cough suppressant (antitussive) that acts on a certain part of the brain (cough center) to reduce the urge to cough. Chlorpheniramine is an antihistamine that helps to relieve watery eyes, itchy eyes/nose/throat, runny nose, and sneezing. Cough-and-cold products have not been shown to be safe or effective in children younger than 6 years. Therefore, this product is not recommended to treat cold symptoms in children younger than 6 years. Ask your doctor or pharmacist for more details about using your product safely. These products do not cure or shorten the length of the common cold and may cause serious side effects. To decrease the risk for serious side effects, carefully follow all dosage directions. Giving more than the recommended dose or using this medication along with other cough-and-cold products has resulted in serious (even fatal) side effects, including slowed/stopped breathing. Talk to the doctor or pharmacist before giving other cough-and-cold medication that might contain the same or similar ingredients (see also Drug Interactions section). Ask about other ways to relieve cough and cold symptoms (such as drinking enough fluids, using a humidifier or saline nose drops/spray). Do not use this product to make a child sleepy.

HOW TO USE: Take this medication by mouth with or without food, usually every 12 hours or as directed by your doctor. Do not take this medication more often than every 12 hours. Doing so may increase the risk of serious (possibly fatal) breathing problems. Shake the bottle well before each dose. Carefully measure the dose using a special measuring device/spoon. Do not use a household spoon because you may not get the correct dose. Do not mix this medication with other liquids or medications. Doing so can release all of the drug at once, increasing the risk of side effects. This medication may cause withdrawal reactions, especially if it has been used regularly for a long time or in high doses. In such cases, withdrawal symptoms (such as restlessness, sweating, uncontrolled movements, nausea, vomiting, diarrhea) may occur if you suddenly stop using this medication. To prevent withdrawal reactions, your doctor may reduce your dose gradually. Consult your doctor or pharmacist for more details, and report any withdrawal reactions immediately. When this medication is used for a long time, it may not work as well. Your doctor may need to increase your dose or change your medication. Talk with your doctor if this medication stops working well. Along with its benefits, this medication may rarely cause abnormal drug-seeking behavior (addiction). This risk may be increased if you have abused alcohol or drugs in the past. Take this medication exactly as prescribed to lessen the risk of addiction. Tell your doctor if your condition persists or worsens.

SIDE EFFECTS: Drowsiness, dizziness, nausea/vomiting, constipation, blurred vision, dry mouth/nose/throat may occur. If any of these effects persist or worsen, notify your doctor or pharmacist promptly. Remember that your doctor has prescribed this medication because he or she has judged that the benefit to you is greater than the risk of side effects. Many people using this medication do not have serious side effects. Tell your doctor immediately if any of these unlikely but serious side effects occur: slow/shallow breathing, mental/mood changes (such as depression, agitation), trouble urinating. Tell your doctor immediately if any of these rare but serious side effects occur: seizures, fast/slow/irregular heartbeat. A very serious allergic reaction to this drug is unlikely, but seek immediate medical attention if it occurs. Symptoms of a serious allergic reaction may include: rash, itching/swelling (especially of the face/tongue/throat), severe dizziness, trouble breathing. This is not a complete list of possible side effects. If you notice other effects not listed above, contact your doctor or pharmacist.

PRECAUTIONS: Before taking this product, tell your doctor or pharmacist if you are allergic to hydrocodone or chlorpheniramine; or if you have any other allergies. This product may contain inactive ingredients, which can cause allergic reactions or other problems. Talk to your pharmacist for more details. Before using this medication, tell your doctor or pharmacist your medical history, especially of: breathing problems (such as asthma, croup), certain brain disorders (such as seizures, head injury, tumor, increased intracranial pressure), stomach/intestinal problems (such as blockage, ileus, chronic constipation, Clostridium difficile-associated diarrhea), glaucoma (narrow-angle), difficulty urinating (such as due to enlarged prostate or urethral stricture), personal or family history of regular use/abuse of drugs/alcohol, kidney disease, liver disease, gallbladder disease, underactive thyroid (hypothyroidism), adrenal gland problem (such as Addison's disease), disease of the pancreas (such as pancreatitis), mental/mood disorders (such as toxic psychosis), heart problems (such as irregular heartbeat), a certain spinal problem (kyphoscoliosis). This drug may make you dizzy or drowsy or cause blurred vision. Do not drive, use machinery, or do any activity that requires alertness or clear vision until you are sure you can perform such activities safely. Avoid alcoholic beverages. To reduce the risk of dizziness and lightheadedness, get up slowly when rising from a sitting or lying position. This medication may contain sugar. If you have diabetes, ask your doctor or pharmacist how to use this product safely. Older adults may be more sensitive to the side effects of this drug, especially dizziness, drowsiness, breathing problems, and trouble urinating. Children may be more sensitive to the side effects of hydrocodone, especially breathing problems. Children may also be more sensitive to the effects of chlorpheniramine. In young children, antihistamines may cause agitation/excitement instead of drowsiness.

DRUG INTERACTIONS: The effects of some drugs can change if you take other drugs or herbal products at the same time. This can increase your risk for serious side effects or may cause your medications not to work correctly. These drug interactions are possible, but do not always occur. Your doctor or pharmacist can often prevent or manage interactions by changing how you use your medications or by close monitoring. To help your doctor and pharmacist give you the best care, be sure to tell your doctor and pharmacist about all the products you use (including prescription drugs, nonprescription drugs, and herbal products) before starting treatment with this product. While using this product, do not start, stop, or change the dosage of any other medicines you are using without your doctor's approval. Some products that may interact with this drug include: anticholinergic drugs (such as benztropine, belladonna alkaloids, scopolamine), antihistamines applied to the skin (such as diphenhydramine cream, ointment, spray), cimetidine, MAO inhibitors (isocarboxazid, linezolid, moclobemide, phenelzine, procabazine, rasagiline, selegiline, tranylcypromine), naltrexone, tricyclic antidepressants (such as amitriptyline, desipramine). The risk of serious side effects (such as slow/shallow breathing, severe drowsiness/dizziness) may be increased if this medication is taken with other products that may also affect breathing or cause drowsiness. Check the labels on all your medicines because they may contain ingredients that cause drowsiness. Ask your pharmacist about using those products safely. This document does not contain all possible drug interactions. Keep a list of all the products you use. Share this list with your doctor and pharmacist to lessen your risk for serious medication problems.

OVERDOSE: If overdose is suspected, contact a poison control center or emergency room immediately. US residents can call the US National Poison Hotline at 1-800-222-1222. Symptoms of overdose may include: slow/shallow breathing, severe drowsiness/dizziness, mental/mood changes (such as confusion, agitation), cold/clammy skin, fast/slow/irregular heartbeat, seizures.

NOTES: Do not share this medication with others. It is against the law.

MISSED DOSE: If you are prescribed this medication on a regular schedule and miss a dose, take it as soon as you remember. If it is near the time of the next dose, skip the missed dose and resume your usual dosing schedule. Do not double the dose to catch up.

STORAGE: Store at room temperature between 68-77 degrees F away from light and moisture. Do not store in the bathroom. Keep all medicines away from children and pets. Do not flush medications down the toilet or pour them into a drain unless instructed to do so. Properly discard this product when it is expired or no longer needed. Consult your pharmacist or local waste disposal company for more details about how to safely discard your product.

IMPORTANT: *HOW TO USE THIS INFORMATION: This is a summary and does NOT have all possible information about this product. This information does not assure that the product is safe, effective, or appropriate for you. This information is not individual medical advice and does not substitute for the advice of your health care professional. Always ask your health care professional for complete information about this product and your specific health needs.*

Jamie Johnson, M.D.

Curriculum Vitae

Employment:

2008-2010 Chief Medical Examiner
 Commonwealth of Kentucky

2000-2008 Associate Chief Medical Examiner
 Commonwealth of Kentucky

1997-1999 Medical Examiner
 Frankfort District, Commonwealth of Kentucky

Graduate Medical Training

7/96-6/97 Subspecialty Fellowship Training, Forensic Pathology
 Office of the Chief Medical Examiner, Commonwealth of Kentucky

7/93-6/96: Resident in Anatomic Pathology
 University of Louisville Affiliated Hospitals

Education

1993 Harvard Medical School: **MD**

1989 Harvard University: **BS** with High Distinction

Certification

American Board of Pathology, Anatomic & Clinical Pathology
American Board of Pathology, Forensic Pathology

Licensure

Massachusetts
Kentucky

Professional Memberships

National Association of Medical Examiners
Kentucky Medical Society
American Academy of Forensic Sciences

Selected Lectures and Presentations

“Recognition of Child Abuse,” Convention, Ky. Association of Orthopaedic Technologists, 2009.

“Homicide Defense and the Role of the Forensic Pathologist,” Seminar, Office of the Kentucky Public Defender, 2008.

“Forensic Pathology,” presented at the Second National Convention on Criminal Law and Forensics, Boston, 2006.

“Sudden Infant Death Syndrome,” presented at the National Association of Medical Examiners Meeting, 2005.

Oddington, Abbey
ME- 2010-555

COMMONWEALTH OF KENTUCKY
Justice Cabinet
OFFICE OF THE CHIEF MEDICAL EXAMINER
Centralized Laboratory Facility
100 Sower Boulevard – Suite 202
Frankfort, KY 40601

FINAL

- I. Otis Media, Acute, Clinical
 - a. Acute lobar pneumonia, upper lobe, right lung.
 - b. Acute bronchopneumonia, remaining lung lobes.
 - i. Pleural effusion
- II. Lymphocytic Myocarditis
- III. Attempted Resuscitation

OPINION- Death in this case is due to an overdose of Hydrocodone & Chlorpheniramine causing a fatal reduction in respiration. Another significant condition contributing to death is Lymphocytic Myocarditis.

CLASSIFICATION OF DEATH: Homicide

Codes: 382.9; 481; 429.0

Date 12-3-2010

/S/ Jamie Johnson, M.D.
MEDICAL EXAMINER

COMMONWEALTH OF KENTUCKY
Justice cabinet
OFFICE OF THE CHIEF MEDICAL EXAMINER
Toxicology Laboratory
100 Sower Boulevard – Suite 205
Frankfort, KY 40601

NAME: Abbey Oddington
 AGE: 2 yrs.
 SEX: F
 OCCUPATION: None
 SUBMITTED: Detective Chris Cross
 COPY 1 Dr. Jamie Johnson
 COPY 2 Detective Chris Cross
 COLLECTED: October 1, 2010
 LAB ID JJCH
 PURPOSE: Homicide Investigation
 SPECIMEN: Urine

*****TOXICOLOGY*****

<i>FLAG</i>	<i>TEST (METHOD)</i>	<i>PRESUMPTIVE</i>
<i>PRESENCE</i>		
OPIATES	(FPIA)	NONE
COCAINE	(FPIA)	NONE
PCP	(FPIA)	NONE
CANNABINOIDS	(FPIA)	NONE
BENZODIAZEPIN	(FPIA)	NONE
AMPHETAMINES	(FPIA)	NONE
ADDITIONAL RESULTS:		HYDROCODONE & CHLORPHENIRAMINE

Paine Clinic**TIME SHEET**

1169 Ross Street, Suite 9
 Robbinsville, KY 44399
 123.456.7890 Fax 123.456.7891

Employee Name: Sean Padgett**Title:** Records Clerk/Receptionist**Employee Number:** 884**Status:** Full-time**Department:** Office**Supervisor:** Max Paine, MD

	Monday 9/27/2010	Tuesday 9/28/2010	Wednesday 9/29/2010	Thursday 9/30/2010	Friday 10/1/2010
Time In	8:30 AM	8:00 AM	8:15 AM	7:55 AM	8:15 AM
Time Out	12:00 PM	11:30 AM	12:00 PM	11:55 AM	10:00 AM
MEAL BREAK					
Time In	1:00 PM	12:30 PM	1:00 PM	1:00 PM	
Time Out	5:15 PM	5:00 PM	5:00 PM	5:00 PM	
TOTAL HRS.	7.75	8.00	7.75	8.00	1.75

Weekly Total Hours Worked: 33.25 hours_____
Employee signature_____
Date/S/ Max Paine, MD_____
Manager signature10/4/2010_____
Date

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of

Petitioner

STATE OF MICHIGAN

v

Respondent

DR. MAX PAINE

_____ /

Docket No.

Issued and entered

this 29th day of April 2005

**by Edward F. Rodgers
Administrative Law Judge**

ADMINISTRATIVE DECISION

The specific issues in this matter, as set forth in the Administrative Complaint, are whether Respondent has violated Sections 16221(a), 16221(b)(v), 16221(b)(vi), 16221(b)(xi), 16221(c)(i) and 16221(c)(iv) of the Code, which provide as follows:

Sec.16221. The department may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order relevant testimony to be taken and shall report its findings to the appropriate disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:

(a) A violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practiced, or condition that impairs, or may impair, the ability to safely and skillfully practice the health profession.

FINDINGS OF FACT

Based on the entire record evidence, including witness testimony and admitted exhibits, the following findings of fact are established:

1. Respondent resides in Lansing, Michigan.
2. Respondent's educational background includes a B.A. from Berea College, Berea, KY, and an M.D. from Boston University School of Medicine, Boston, MA. Dr. Paine was admitted to the practice of medicine in Michigan in 1990.

3. Since 1990, Respondent worked as a part of a small family practice offering individual pediatric treatment.
4. The Respondent failed to properly diagnose a juvenile's medical condition. This failure to diagnose directly resulted in the death of the patient.
5. The failure of the Respondent to properly diagnose the juvenile's medical condition constituted negligence.

CONCLUSIONS OF LAW

Petitioner has the burden of proof in this matter to show, by a preponderance of the evidence, that Respondent has violated the Code provisions, as set forth in the Administrative Complaint. The specific charges are addressed below, in the order presented in the Administrative Complaint. Petitioner has shown by a preponderance of the evidence that Respondent's failure to diagnose evidences a conduct, practice or condition, which impairs, or may impair, the ability to safely and skillfully practice the health profession.

Therefore, a violation of Section 16221(a) of the Code has been established and the Respondent's medical license is hereby suspended until further findings of this tribunal.

EXCEPTIONS

If a party chooses to file Exceptions to this Proposal for Decision, the Exceptions must be filed within fifteen (15) days after it is issued and entered. If an opposing party chooses to file a Response to the Exceptions, it must be filed within five (5) days after Exceptions are filed. All Exceptions and Responses to Exceptions must be filed with the State Office of Administrative Hearings and Rules, P.O. Box 30695, Lansing, Michigan 48909-8195.

/S/
Edward F. Rodgers
Administrative Law Judge

**Curriculum Vitae
Pat Evanstein, M.D.**

Business Address: Evanstein Forensic Associates, Inc.
104 Nicholasville Rd., Suite A
Lexington, KY 40515
(555) 555-5555
E-mail: EFA@insight.com

Date & Place of Birth: October 23, 1943, in Lexington, Kentucky

Employment:

- President, Evanstein Forensic Associates, Inc., 2008 to present
- Chief Medical Examiner, Commonwealth of Kentucky, Retired, 1993-2008
- Medical Examiner, Commonwealth of Kentucky, 1983-1993
- Associate Chief Medical Examiner, Fulton County, Atlanta, Georgia, 1978-1983
- Professor and Director Forensic Pathology Training Program, Morehouse School of Medicine, 1976-1978
- Pathologist for United States Federal Penitentiary, Atlanta, Georgia, 1973-1976

Education:

- FELLOWSHIP: Forensic Pathology, Yale-New Haven Hospital, 1972-1973
- RESIDENCY: Pathology (AP/CP), Yale-New Haven Hospital, 1968-1972
- MEDICAL SCHOOL: Yale School of Medicine, 1968
- UNDERGRADUATE: Centre College, 1964

Lecturer:

- Morehouse School of Medicine
- University of Louisville School of Law
- Kentucky Criminal Justice Council
- Eastern Kentucky University Department of Criminal Justice
- University of Kentucky College of Medicine

Medical Licensure: Georgia and Kentucky

Certification: American Board of Pathology

Selected Publications and Presentations:

- “Intoxication—Its Problems and Pitfalls,” National Health Conference, New York, 2003.
- “Forensic Medicine in the ER,” Seminar, Piedmont Hospital, 2007.
- “Comprehensive Investigation of Death,” Society of Clinical Pathologists, Boston, 2008.
- “Crime Scene Investigation Seminar,” Law Enforcement Conference, Louisville, 2007.

Curriculum Vitae
Max Paine, MD

OFFICE ADDRESS

Paine Clinic
1169 Ross Street, Suite 9
Robbinsville, KY 44399
(123) 456-7890

PERSONAL DATA

Date of Birth: August 14, 1960
Place of Birth: Johnson City, TN

EDUCATION

Pediatric Internship (1985-86)	Children's Hospital Boston; Boston, MA
M.D. (1985)	Boston University School of Medicine; Boston, MA
B.A., Biology (1981)	Berea College; Berea, KY

PROFESSIONAL EXPERIENCE

Pediatrician/Owner (2007 to present)	Paine Clinic, Robbinsville, KY
Attending Physician (2006-2007)	Central Baptist Hospital, Lexington, KY
Pediatrician (1990 to 2005)	Lansing Children's Clinic, Lansing, MI
Clinical Fellow (1988-1990)	Children's Hospital Boston, Boston, MA
Pediatric Residency (1986-88)	Children's Hospital Boston, Boston, MA

LICENSURE AND CERTIFICATION

Massachusetts License #4585 (1988)
American Board of Pediatrics (1989)
Michigan License #25688 (1990)
Kentucky License #19M227J (2006)

PROFESSIONAL ORGANIZATIONS

American Pediatric Society
Society for Pediatric Research
Kentucky Medical Association
American Society of Pediatric Nephrology
Association for the Care of Children in Hospitals
Ambulatory Pediatric Association
American Academy of Pediatrics
Society for Developmental and Behavioral Pediatrics

SELECTED PUBLICATIONS

Paine, Max, The Treatment of Children in Intensive Care Units in Kentucky. *Pediatric Syndromes*. Austin, TX: GLS Publishing Co.; 2009:45-51.

Paine, Max, Clinical Characteristics of Common Childhood Diseases. *Pediatrics*. 1989; 210:107-110.

PAINE CLINIC PATIENT INTAKE FORM

PATIENT INFORMATION			
Name	<u>Oddington</u>	<u>Abbey</u>	<u>L</u>
	Last Name	First Name	Initial
Soc. Sec. # <u>999-22-9876</u>			
Address <u>123 Main Street</u>			
City	<u>Robbinsville</u>	State	<u>Kentucky</u>
		Zip	<u>44399</u>
Sex	<input type="checkbox"/> M <input checked="" type="checkbox"/> F Age <u>2</u> Birth date <u>5-4-2008</u> <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Separated <input type="checkbox"/> Divorced		
Patient Employed By		Occupation	
Home Phone		Work/Mobile phone	
In case of emergency, who should be notified? <u>Sam Oddington</u> Phone <u>987-654-3210</u>			
INSURANCE			
Person Responsible for Account	<u>Oddington</u>	<u>Sam</u>	
	Last Name	First Name	Initial
Relationship to Patient	<u>grandparent</u>	Birth date	<u>6-10-47</u>
		Soc. Sec. #	<u>321-45-6789</u>
Address (if different from patient's)		Phone	
		<u>987-654-3210</u>	
City		State	
		Zip	
Person Responsible Employed by		Occupation	
		<u>Retired U.S.P.S. clerk</u>	
Insurance Company		Ins. ID No.	
<u>NONE</u>			
Names of other dependents covered under this plan			
ASSIGNMENT AND RELEASE			
<p>I, the undersigned, certify that I (or my dependent) have insurance coverage with _____ <div style="text-align: right; font-size: small;">Name of Insurance Company(ies)</div> and assign directly to my provider all insurance benefits otherwise payable to me for services rendered. I understand that I am ultimately responsible for all charges accumulated. I hereby authorize the doctor to release all information necessary to secure the payment of benefits, and authorize the use of this signature on all insurance submissions.</p>			
_____		_____	_____
Responsible Party Signature		Relationship	Date
I give permission for treatment of myself/my dependent to my assigned provider.			
_____		_____	_____
Responsible Party Signature		Relationship	Date
PATIENT FINANCIAL AGREEMENT			
<p>Insured's or authorized person's signature: I authorize payment of medical benefits to the provider for services. I fully understand that, regardless of insurance coverage, I am legally responsible for all fees due the doctor.</p>			
Patient's Signature		Date	
Responsible Party's Signature		Date	
<u>Sam Oddington</u>		<u>9-30-2010</u>	
Returned checks will be assessed a \$30.00 fee. Any questions regarding financial issues may be directed to the Office Manager.			

MEDICAL HISTORY

Indicate which of the following you have experienced or are currently experiencing:

- | | | |
|---|--|---|
| <input type="checkbox"/> Heart surgery/disease/attack | <input type="checkbox"/> Liver disease (inc. jaundice) | <input type="checkbox"/> Paralysis, stroke |
| <input type="checkbox"/> Severe muscular/skeletal problem | <input type="checkbox"/> Sexually transmitted disease | <input type="checkbox"/> Seizure |
| <input type="checkbox"/> Diabetes | <input type="checkbox"/> Currently pregnant | <input type="checkbox"/> Neurological disorder |
| <input type="checkbox"/> Thyroid disease | <input type="checkbox"/> Currently nursing | <input checked="" type="checkbox"/> Stomach problem |
| <input type="checkbox"/> High blood pressure | <input type="checkbox"/> Bleeding tendencies | <input type="checkbox"/> Visual impairment |
| <input type="checkbox"/> Cancer | <input checked="" type="checkbox"/> Severe respiratory problem | <input type="checkbox"/> Hearing impairment |
| <input type="checkbox"/> Hepatitis | <input type="checkbox"/> Severe urinary tract problems | <input type="checkbox"/> Glaucoma |

If you checked any of these conditions, or are experiencing others, please indicate the specific nature here:

Abbey got sick a few days ago. She's been coughing a lot, and yesterday her cough got worse. This morning she was coughing up green mucus, she had a fever, her breathing was fast, she was shaking like she was chilling, and her heart was beating very fast. She also vomited.

If you have a family history of these conditions, or similar conditions, please indicate the specific nature here:

CURRENT MEDICAL STATUS

Height: 2 ft. 8 in. Weight: about 28 lbs.

Please indicate any prescribed and/or over-the-counter medications that you are currently taking.

MEDICATION	DOSAGE (mg)	FREQUENCY	PRESCRIBER

Allergies none that I know of

Have you seen a physician in the past two years? ☐ Yes ☐ No Date of last physical exam: _____

Primary Care Physician _____ Telephone number _____

PAINE CLINIC PATIENT INTAKE FORM

PATIENT INFORMATION			
Name	<u>Oddington</u>	<u>Abbey</u>	<u>L</u>
	Last Name	First Name	Initial
Soc. Sec. # <u>999-22-9876</u>			
Address <u>123 Main Street</u>			
City	<u>Robbinsville</u>	State	<u>Kentucky</u>
		Zip	<u>44399</u>
Sex	<input type="checkbox"/> M <input checked="" type="checkbox"/> F	Age	<u>2</u>
Birth date		<u>5-4-2008</u>	<input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Separated <input type="checkbox"/> Divorced
Patient Employed By		Occupation	
Home Phone		Work/Mobile phone	
In case of emergency, who should be notified?		<u>Sam Oddington</u>	
		Phone <u>987-654-3210</u>	
INSURANCE			
Person Responsible for Account	<u>Oddington</u>	<u>Sam</u>	
	Last Name	First Name	Initial
Relationship to Patient	<u>grandparent</u>	Birth date	<u>6-10-47</u>
		Soc. Sec. #	<u>321-45-6789</u>
Address (if different from patient's)		Phone <u>987-654-3210</u>	
City		State	
		Zip	
Person Responsible Employed by		Occupation <u>Retired U.S.P.S. clerk</u>	
Insurance Company <u>NONE</u>		Ins. ID No.	
Names of other dependents covered under this plan			
ASSIGNMENT AND RELEASE			
<p>I, the undersigned, certify that I (or my dependent) have insurance coverage with _____</p> <p style="text-align: right; margin-right: 50px;">Name of Insurance Company(ies)</p> <p>and assign directly to my provider all insurance benefits otherwise payable to me for services rendered. I understand that I am ultimately responsible for all charges accumulated. I hereby authorize the doctor to release all information necessary to secure the payment of benefits, and authorize the use of this signature on all insurance submissions.</p>			
_____		_____	_____
Responsible Party Signature	Relationship	Date	
I give permission for treatment of myself/my dependent to my assigned provider.			
_____		_____	_____
Responsible Party Signature	Relationship	Date	
PATIENT FINANCIAL AGREEMENT			
<p>Insured's or authorized person's signature: I authorize payment of medical benefits to the provider for services. I fully understand that, regardless of insurance coverage, I am legally responsible for all fees due the doctor.</p>			
Patient's Signature _____		Date _____	
Responsible Party's Signature <u>Sam Oddington</u>		Date <u>9-30-2010</u>	
Returned checks will be assessed a \$30.00 fee. Any questions regarding financial issues may be directed to the Office Manager.			

MEDICAL HISTORY

Indicate which of the following you have experienced or are currently experiencing:

- | | | |
|---|--|---|
| <input type="checkbox"/> Heart surgery/disease/attack | <input type="checkbox"/> Liver disease (inc. jaundice) | <input type="checkbox"/> Paralysis, stroke |
| <input type="checkbox"/> Severe muscular/skeletal problem | <input type="checkbox"/> Sexually transmitted disease | <input type="checkbox"/> Seizure |
| <input type="checkbox"/> Diabetes | <input type="checkbox"/> Currently pregnant | <input type="checkbox"/> Neurological disorder |
| <input type="checkbox"/> Thyroid disease | <input type="checkbox"/> Currently nursing | <input checked="" type="checkbox"/> Stomach problem |
| <input type="checkbox"/> High blood pressure | <input type="checkbox"/> Bleeding tendencies | <input type="checkbox"/> Visual impairment |
| <input type="checkbox"/> Cancer | <input checked="" type="checkbox"/> Severe respiratory problem | <input type="checkbox"/> Hearing impairment |
| <input type="checkbox"/> Hepatitis | <input type="checkbox"/> Severe urinary tract problems | <input type="checkbox"/> Glaucoma |

If you checked any of these conditions, or are experiencing others, please indicate the specific nature here:

Abbey got sick a few days ago. She's been coughing a lot, and yesterday her cough got worse. This morning she was coughing up green mucus, she had a fever, her breathing was fast, she was shaking like she was chilling, and her heart was beating very fast. She also vomited.

If you have a family history of these conditions, or similar conditions, please indicate the specific nature here:

CURRENT MEDICAL STATUS

Height: 2 ft. 8 in. Weight: about 28 lbs.

Please indicate any prescribed and/or over-the-counter medications that you are currently taking.

MEDICATION	DOSAGE (mg)	FREQUENCY	PRESCRIBER
<i>Tussionex cough syrup</i>	<i>cut dose</i>	<i>twice in 12-hr. period</i>	

Allergies none that I know of

Have you seen a physician in the past two years? ☐ Yes ☐ No Date of last physical exam: _____

Primary Care Physician _____ Telephone number _____

COMMONWEALTH OF KENTUCKY

ROBBINS CIRCUIT COURT

CASE NO. 10-CR-241-1

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

JURY INSTRUCTIONS

SAM ODDINGTON

DEFENDANT

* * * * *

AUTHORIZED VERDICTS

Under the evidence presented to you in this case, you may find the Defendant, Sam Oddington, not guilty of any offense or you may find the Defendant guilty of Reckless Homicide.

INSTRUCTION NO. 1

Immediately upon retiring to the jury room, you shall select one of your number to be foreperson. All twelve jurors must agree on a verdict. The law presumes a Defendant to be not guilty of a crime and the indictment shall not be considered as evidence against him/her. You shall find the Defendant not guilty unless you are satisfied from the evidence alone, beyond a reasonable doubt, that s/he is guilty. The Commonwealth of Kentucky has the burden of proof and that burden does not shift to the Defendant during the trial.

INSTRUCTION NO. 2

PRESUMPTION OF INNOCENCE

The law presumes Sam Oddington innocent of the offense charged and of each degree thereof. The fact that a person has been indicted shall not be considered as evidence or as having

any weight against the person charged, and no adverse inference of any kind can be drawn against the defendant from the summons. A summons is merely a written accusation, charging a person with the commission of an offense. It has no probative force and carries with it no implication of guilt. A defendant begins a trial with a “clean slate,” or with no evidence against him/her, and the law permits nothing but legal evidence presented before the jury at the trial to be considered in support of any charge against the defendant. Thus, the presumption of innocence alone is sufficient to require you to find a defendant not guilty, unless each and every member of the jury is convinced beyond a reasonable doubt of his/her guilt after careful, impartial consideration of all the evidence. You will find the defendant not guilty unless you are satisfied from the evidence alone, and beyond a reasonable doubt, that s/he is guilty. If, upon the whole case, you have a reasonable doubt that s/he is guilty; you will find him/her not guilty.

INSTRUCTION NO. 3

REASONABLE DOUBT AND BURDEN OF PROOF

In this case, guilt of the offense charged must be established beyond a reasonable doubt. The burden of establishing such guilt beyond a reasonable doubt rests upon the Commonwealth from the beginning to the end of the trial. The Commonwealth must establish beyond a reasonable doubt every fact essential to convict the defendant of the offense charged. A defendant, however, has no burden to sustain, and the law does not require a defendant to prove him/herself innocent, but requires the Commonwealth to prove him/her guilty. Unless and until the Commonwealth proves a defendant guilty beyond a reasonable doubt to all of you, you must consider him/her innocent and find him/her not guilty.

INSTRUCTION NO. 4

DEFINITIONS

RECKLESSLY

A person acts recklessly with respect to a result or to a circumstance when s/he fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstances exist. The risk must be of such nature and degree that failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

INSTRUCTION NO. 5

RECKLESS HOMICIDE

You will find him/her guilty under this instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

- A. That in this county on or about October 1, 2010, and before the finding of the indictment herein, s/he caused the death of Abbey Oddington;
- B. That in so doing, s/he acted recklessly as that term is defined in Instruction No. 4.

INSTRUCTION NO. 6

UNANIMOUS VERDICT

The verdict of the Jury must be unanimous and be signed by one of you as foreperson. You may use the forms provided at the end of these instructions in writing your verdict.

JURY VERDICT

(A) We, the jury, find the Defendant **NOT GUILTY**.

FOREPERSON

(B) We, the jury, find the Defendant **GUILTY** of Reckless Homicide, and fix his/her punishment at confinement in the penitentiary for _____ (not less than one year, nor more than five years).

FOREPERSON